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 CLUCK UNIVERSITY CHICKEN OF PALO ALTO, LP, d/b/a
 UNIVERSITY CHICKEN SANTA CLARA, LP; UC RESTAURANT
 MANAGEMENT, INC.; UNIVERSITY CHICKEN, INC.; UNIVERSITY
 CHICKEN FRESNO, LP; UNIVERSITY CHICKEN SAN JOSE, LLC; and
 MICHAEL C. BORNEO

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLUCK-U, CORP.,
 a Maryland corporation,

Plaintiff,

v.

CLUCK UNIVERSITY CHICKEN OF
 PALO ALTO, LP, d/b/a UNIVERSITY
 CHICKEN SANTA CLARA, a California
 limited partnership; et al.,

Defendants.

) Case No. C07-04986 CW

)
) **JOINT CASE MANAGEMENT**
) **CONFERENCE STATEMENT AND**
) **[PROPOSED] ORDER**

JOINT CASE MANAGEMENT STATEMENT

Pursuant to Civil Local Rule 16-9 and the Standing order for all judges of the Northern District of California, the Joint Case Management Statement below contains the contents required as of March 1, 2007.

1. Jurisdiction and Service:

- a) This action arises under 28 U.S.C. § 1125 et seq. Jurisdiction is therefore proper under 28 U.S.C. §1331.
- b) Pendent or supplemental jurisdiction of this Court exists for the state law claims stated herein, each of which arise out of a common nucleus of operative facts with those from which the federal claim arises.
- c) Venue in this judicial district is proper under 28 U.S.C. §1391(b) and (c). Defendants' businesses are located within this judicial district, and this complaint concerns violations of both federal and California state law.
- d) Service has been accepted by the opposing party and an Answer has been filed.

1. Facts:

Facts Not In Dispute

The Complaint alleges that since 1985, plaintiff has been doing business using the mark "CLUCK-U CHICKEN" and related marks in connection with fast food restaurant services. Plaintiff has filed a federal Trademark Registration Application Serial No. 77/285,875 therefor. Plaintiff also alleges trademark rights to the mark "UNIVERSITY CHICKEN," and related marks, with registrations with the United States Patent and Trademark Office, including federal Trademark Registration No. 3137573.

Defendant was a licensee of Plaintiff's predecessor in interest. Plaintiff alleges it acquired intellectual property, including trademark, copyright, trade secret and trade dress rights by virtue of its use in commerce of various menus, menu item names, recipes, logos, trade names, restaurant decor and styles of doing business. As part of the licensing relationship, the Complaint alleges that Defendant had been permitted to use such intellectual property rights.

1 After Plaintiff assumed ownership of the marks, the license was terminated.

2 The Complaint alleges that Defendants are engaged in trademark infringement by using a
3 confusingly similar trademark of "UNIVERSITY CHICKEN" and also "CLUCK UNIVERSITY
4 CHICKEN" and related marks for fast food restaurant services. It further alleges that Defendants
5 used Plaintiff's copyrighted images and text, trade dress, and trade secret and proprietary
6 confidential information. The complaint alleges trademark, trade dress and copyright
7 infringement, trade secret misappropriation, interference with prospective business advantage,
8 unjust enrichment, concealment, constructive fraud, unfair business practices and unfair
9 competition. It further alleges promissory estoppel in certain assurances that Defendant Michael
10 Borneo provided to Plaintiff upon termination of the license.

11 Defendants deny all charging allegations in the complaint. They raise defenses inter alia
12 of: laches, unclean hands, estoppel, waiver, the statute of limitations, consent and acquiescence,
13 and, good faith senior use in a remote geographical area, each of which are denied by Plaintiff.

14 Facts in Dispute

- 15 a) Whether Defendants are using trademarks which are confusingly similar to
16 Plaintiff's trademarks;
17 b) Whether Defendants are using trade dress which is confusingly similar to
18 Plaintiff's trademarks;
19 c) Whether Defendants are using Plaintiff's copyright protected material;
20 d) Whether Defendants are using Plaintiff's trade secrets and confidential
21 proprietary information in conducting business;
22 e) Whether Defendants willfully promised and misrepresented that the
23 unauthorized use of Plaintiff's intellectual property, trade secrets, and
24 confidential proprietary information had ceased;
25 f) Whether Defendants profited from unauthorized use of Plaintiff's intellectual
26 property, trade secrets, and confidential proprietary information;

- g) Whether Defendants' activities interfered with Plaintiff's ability to develop the business market within the western regions of the United States;
- h) Whether Defendants concealed material facts from Plaintiff, inducing Plaintiff to forgo further action to enforce its rights;
- i) Whether Plaintiff's actions preclude it from recovery under any of the defenses asserted; and
- j) The amount of damages or wrongful profits, if any, to which Plaintiff is entitled.

3. Legal Issues: The principal legal issues are:

- a) Whether Defendants infringe Plaintiff's registered and unregistered trademarks and service marks;
- b) Whether Defendants infringe Plaintiff's distinctive restaurant trade dress by offering services confusingly similar to those offered by Plaintiff;
- c) Whether Defendants have infringed Plaintiff's copyright protected images and text;
- d) Whether Defendants have misappropriated Plaintiff's trade secrets and confidential proprietary information;
- e) Whether Defendants' acts constitute unfair competition as set forth under 15 U.S.C. §1125(a);
- f) Whether Defendants' acts constitute unfair business practices as set forth under Cal. Bus. & Prof. Code §17200, et seq.;
- g) Whether Defendants are estopped to deny promises, conduct, and representations made to Plaintiffs, and estopped from continuing use of Plaintiff's intellectual property;
- h) Whether Defendants are unjustly enriched at the expense of Plaintiff;
- i) Whether Defendants' acts constitute interference with Plaintiff's prospective business advantage;

- 1 j) Whether Defendants' engaged in a course of conduct designed to conceal
2 material facts from Plaintiff's knowledge;
3 k) Whether Defendants' acts constitute constructive fraud upon Plaintiff; and
4 l) Whether Plaintiff's claim is barred by any affirmative defense;

5 The parties will likely refine these issues or include other appropriate issues as they
6 develop or become known to the parties.

7 3. Motions:

8 There are no motions currently on file.

9 4. Amendment of Pleadings:

10 There are no current plans for amendment of the pleadings. The proposed deadline to
11 amend pleadings is set forth below.

12 5. Evidence Preservation:

13 Both parties have instructed their respective clients to make reasonable efforts to preserve
14 all electronic and other evidence identifiably related to the litigation, and to make reasonable and
15 practical efforts to prevent inadvertent or automated destruction of relevant and material
16 electronic documents. The parties have further agreed that there shall be no waiver of privileges
17 in connection with production of electronically stored information, except upon written notice by
18 the receiving party or acknowledgement by the producing party and failure to dispute or assert
19 privilege within 14 days thereafter. Both parties have sought to suspend any document
20 destruction program that may destroy relevant evidence, and have ceased erasure of related
21 emails, voicemails, and other electronic material.

22 6. Disclosures:

23 Pursuant to Fed. R. Civ. P. 26(a) (1) & Civil L.R. 16-9, the initial disclosure deadline will
24 be on or before February 26, 2008.

25 7. Discovery:

26 As of January 22, 2008, no discovery has been taken. The parties anticipate taking
adequate discovery in order to determine the full scope of facts and issues. The parties believe

1 the discovery limits of the Federal Rules of Civil Procedure are sufficient limitation to the
2 discovery of the case at bar.

3 The parties jointly propose the following discovery plan set forth under the Scheduling
4 Plan, below. No special ordering or phasing is proposed.

5 9. Class Actions:

6 This is not a class action case.

7 10. Related Cases:

8 There are no related proceedings pending.

9 11. Relief:

10 Plaintiff seeks injunctive relief, the reasonable value of goods and services rendered, and
11 both damages and other compensation, plus trebling of damages.

12 12. Settlement and ADR:

13 Both parties have agreed to early private mediation.

14 13. Consent to Magistrate Judge for All Purposes:

15 Parties do not consent to referral to a magistrate judge.

16 14. Other References:

17 This case is not suitable for reference to binding arbitration, a special master, or the
18 Judicial Panel on Multidistrict Litigation.

19 15. Narrowing of Issues:

20 The parties are unaware of any issues that can be narrowed by agreement or by motion and
21 at this point do not have suggestions to expedite the presentation of evidence at trial. The parties
22 do not request any bifurcation of issues, claims, or defenses.

23 16. Expedited Schedule:

24 The parties do not believe that this is the type of case that need be handled on an
25 expedited basis, but propose instead an early mediation date and the following proposed
26 scheduling plan to aid in the expedited resolution of the case.

1 17. Scheduling:

2 Plaintiff and Defendants jointly propose the following scheduling plan:

3 **PROPOSED SCHEDULING PLAN**

4 Deadline for adding new parties/amendments June 20, 2008

5 Last day to complete mediation: June 20, 2008

6 Completion of non-expert discovery November 21, 2008

7 Disclosure of experts & reports December 19, 2008

8 Submittal of rebuttal expert reports January 23, 2008

9 Close of expert discovery February 27, 2009

10 Last day for hearing dispositive motions: April 9, 2009

11 Pretrial conference: May 19, 2009

12 18. Trial:

13 Jury trial has been requested. The parties expect a trial of five (5) days. The parties

14 suggest a trial date beginning on or after June 15, 2009.

15 19. Disclosure of Non-party Interested Entities or Persons:

16 Plaintiff has filed a "Certification of Interested Entities or Persons" and does not have

17 knowledge of any other persons, firms partnerships, corporations (including parent corporations)

18 or other entities that have either (i) a financial interest in the subject matter in controversy or in a

19 party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the

20 outcome of the proceeding.

21 20. Other Matters:

22 None.

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24 //

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SIGNATURE AND CERTIFICATION BY PARTIES AND COUNSEL

Pursuant to Civil L.R. 16-8, each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the available dispute resolution options.

Dated: February 5, 2008

LARIVIERE, GRUBMAN & PAYNE, LLP

By: 

Robert W. Payne
Attorneys for Plaintiff

Dated: February 5, 2008

HAYES DAVIS BONINO ELLINGSON McLAY
& SCOTT, LLP

By: 

Stephen P. Ellingson
Jamie A. Radack
Attorneys for Defendants

IT IS SO ORDERED.

Dated: _____

Hon. Claudia Wilken
United States District Court Judge